IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1148 of 1998

with

SPECIAL CIVIL APPLICATION NOS. 1144/98
TO
1147/98, 1149/98, 1150/98 & 1152/98 TO 1154/98

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

N.R PAPER & BOARD LIMITED & ORS.

Versus

DY. COMMISSIONER OF INCOME TAX

Appearance:
MR SN SOPARKAR, Advocate for the Petitioners
MR MIHIR JOSHI with MR MANISH R BHATT, Advocates for the Respondents

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CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 23/03/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

In this group of petitions, the petitioner assessees have invoked the writ jurisdiction of this Court, seeking to challenge the notices issued to them under Section 143(2) of the Income Tax Act, 1961, which are all at Annexure "A" to these petitions, by which the Deputy Commissioner of Income Tax, Special Range II, Surat, required these assessees to attend his office on the dates mentioned in the notices, in connection with the returns of income submitted by them for the Assessment Year 1995-96.

After the notices were issued in these petitions and affidavits in reply and rejoinders were filed, both the sides made a request to this Court to hear the matters finally and accordingly they were heard finally at length on all the contentions raised. The main arguments has been canvassed in Special Civil Application No. 1148/98 and both the sides have referred to the papers produced therein. It was pointed out that all these matters contained identical points except that in the writ petition other than Special Civil Application Nos. 1148/98 and 1153/98, no grounds were given by the Assessing Officer for proceeding with the regular assessments under Section 143(2) in connection with the returns of income submitted by the assessees for the assessment year 1995-96. Since common points have been raised and argued together in this group of petitions, they are being disposed of by this common judgement and order.

2. According to the petitioners, a search and seizure operation was carried on from 1.12.1995 and concluded on 6.1.1996 and the block assessment under Chapter XIV-B of the said Act was made for the block period from 1.4.1985 till 6.1.1996. In those proceedings, the total income of the assessee for the said period was worked out in accordance with the provisions of Section 158BB of the Act and after giving credit for the amount disclosed, the assessment order was made as per Annexure "B" to the petition, calling upon the petitioner assessees to pay tax on the total undisclosed income for the block period, which included Assessment Year 1995-96. Admittedly, the said assessment orders passed under Chapter XIV-B of the Act against these petitioners have been challenged by them before the Income Tax Appellate Tribunal, Ahmedabad and those appeals are pending before the Tribunal. The case of

these petitioners is that in view of the fact that the total income for the assessment year 1995-96 was already computed in the assessment orders for the block period, there was no question of now proceeding with the regular assessment for the assessment year 1995-96 and that the returns of income filed by them in respect of the assessment year 1995-96 were required to be filed. In any event, no addition could be made to the total income disclosed in the said returns in view of the block assessments made for the period which included the said assessment year 1995-96. According to the petitioners, they approached the respondent with a request to drop the proceedings on this ground, but the respondent is not inclined to do so and is proceeding ahead to make the regular assessments for the assessment year 1995-96. The petitioners' case is that any such proceedings would be wholly without jurisdiction.

3. In the affidavit-in-reply, the Revenue has contended that under the new scheme incorporated in Chapter XIV-B of the Act, the undisclosed income detected as a result of search was required to be assessed separately and the jurisdiction of the Assessing Officer during the course of the block assessment proceedings started as a result of search, was limited to the assessment of undisclosed income found as a result of search only. The Assessing Officer in such proceedings cannot review the additions made during the course of regular assessment proceedings. According to the Revenue, while computing the undisclosed income, the total income is to be computed on the basis of evidence found as a result of search or requisition of books of account or document and such other material or information as are available with the Assessing Officer. The proceedings under Chapter XIV-B was to run parallel to the regular assessment and any subsequent change in the assessed income in the regular assessment order because of rectification, re-assessment, revision, appeal, reference or order of Settlement Commission etc., does not disturb the figure of undisclosed income of the block period. According to the Revenue, there are no two assessments from the same year since the block assessment is for the undisclosed income for the block period and not for any specific year while the regular assessment is for the total income of the specific year. Reliance is placed in support of these contentions raised in the affidavit-in-reply, on the Budget speech of the Minister of Finance for 1995-96 (reported at 212 ITR 87), Notes on Clauses (reported at 212 ITR 306 [Statutes]) and CBDT Circular No. 717 dated 14.8.95, reported at 215 ITR p.33 [Statutes]) all of which are reproduced in the

affidavit-in-reply. The Department has also contended that the assessees had taken up a ground before the Income Tax Appellate Tribunal in appeal filed against the order of block assessment that certain additions made therein were not covered under "undisclosed income" and that the disallowance could have been decided in the regular assessment proceedings of the assessment year 1995-96.

4. The learned Counsel appearing for the petitioners in this group of petitions strongly contended that the Assessing Officer had no jurisdiction to make any assessment order in respect of the returns of income filed by these petitioners in connection with the Assessment Year 1995-96 and that no notice could have been issued by him under Section 143(2) of the Act. It was contended that the powers under Section 143(2) are impliedly taken away by the provisions of Chapter XIV-B, which prescribed for a special procedure for assessment of search cases and under which the total income of the block period including that of the said assessment year 1995-96 was already worked out, leaving no scope for it being worked out again. It was argued that having determined the total income under Chapter XIV-B, the Assessing Officer was left with no jurisdiction to redetermine the same for the previous year included in the block period, because, doing so would tantamount to two assessments for the same year by working out two different figures of total income of the previous year, one reflected in the block assessment and the other in the regular assessment. It was contended that this could never have been intended by the legislature and the only way in which the total income of a previous year worked out in the block assessment could be changed, was by way of rectification proceedings. It is contended that if the Assessing Officer is permitted to determine total income of such previous year again in the regular assessment under Section 143(3), it would lead to double taxation in respect of the income found to be taxable in the block period assessment, because, under Section 143(3), the Assessing Officer shall call upon the assessee to pay tax on the basis of the total income that he determines, which would include the undisclosed income also. The Counsel further contended that this will bring about a situation where the tax will be required to be paid by the assessee on the same income and further that the assessee will be exposed to penal proceedings even in respect of that undisclosed income, despite the immunity contained in Chapter XIV-B. It was further argued that if it was felt that the computation of total income at the first stage under Section 158BB of the Act was

incorrect, the only course open to the Revenue was to modify that block assessment and change the figure of total income. However, keeping that figure alive, there can not be redetermination of total income because for one assessee for the same assessment year, there could only be one figure of total income. The learned Counsel heavily relied upon the decision of Punjab and Haryana High Court in the case of Raja Ram Kulwant Rai Vs. Asstt.Commissioner of Income Tax, reported in 227 ITR 187 and the decision of the Kerala High Court in the case of N.T.John Vs. CIT, reported in 228 ITR 314, in support of his submissions. The learned Counsel repeatedly emphasised that in order to maintain uniformity, even if the Court found itself not in agreement with these decisions of the other High Courts, they ought to be followed. In support of this contention, he relied upon the decision of this Court in CIT Vs. Sarabhai Sons Ltd. reported in 143 ITR 473 and also on the decision of this Court in CIT Vs. Deepak Family Trust No.1 and anr., reported in 211 ITR 575.

5. The learned Counsel appearing for the Revenue argued that Chapter XIV-B of the said Act was devised to assess the undisclosed income and did not affect the regular assessments or the orders of the appellate or revisional Authorities or the changes made pursuant to the orders of the Court. It was contended that Section 158BB provided for computation of undisclosed income for the block period, and computation of aggregate total income of the previous years falling within that block period was the first step for the purpose of working out the undisclosed income by reducing that aggregate sum by aggregate of total income as disclosed. This according to him was not the same thing as assessment of the total income of the previous year under Section 143(3) of the Act. It was argued that the assessment under Chapter XIV-B of undisclosed income did not postulate assessing the total income of each year falling in the block period by again following the procedure of assessment as contemplated by Section 143(3) in respect of each such year. It was submitted that the later part of Section 158BB(1) and Clauses (a) to (f) indicated that the total income in the assessments made for the returns pending or the total income reflected from the settlement order under Section 245D(4) which order was final, were not to be disturbed. The learned Counsel submitted that the immunity from certain interest and penalties contemplated by Section 158BF was only in respect of the undisclosed income determined in the block assessment and had no bearing on the assessments otherwise made. It was also contended that only the specified penalties were not to

be imposed and it is not as if there was immunity granted against the interest and penalties which could otherwise be levied or imposed under the other provisions of the Act, which are not mentioned in Section 158BF.

6. Chapter XIV-B lays down a special procedure for assessment of search cases and provides for assessment of undisclosed income as a result of search. The search is carried out under Section 132 of the Act. Such search and seizure can be authorised under that provision if in consequence of information in possession of the concerned authority, he has reason to believe that the books or documents are not, or would not be produced or any money, bullion, jewellery or other valuable article or thing which represents either wholly or partly income or property, has not been, or would not be disclosed for the purposes of the said Act. It may be noted that these assets referred to clause (c) of Section 132(1) were for the purpose of Section 132, described as `the undisclosed income or property'. The concept of `undisclosed income' as defined in clause (b) of Section 158B of the Act, is however, wider and different as we will later notice. Under Section 132, the officer authorised for conducting search and seizure is referred to as "the authorised Officer" and he can carry on search in any building, place, vessel or air-port where he has reason to suspect that the books of account or documents or the assets which the assessee will not or would not produce, are kept. In the process he can break open any lock and search any person. Under sub-clause (iii) of Section 132(1)(b), such authorised officer can seize any such books of account, other documents or the assets mentioned therein found as a result of such search. He can place marks of identification on the books of accounts or other documents and make note or inventory of such assets. Under sub-section (4) of Section 132, the authorised officer may, during the course of his search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents or other assets mentioned therein and any statement made by such person during such examination may thereafter be used in evidence in any proceedings under the Act. We have referred to the provisions of Section 132(1) to Section 132(4) in detail because the very basis of application of the special procedure for assessment of search cases under Chapter XIV-B is the search conducted under Section 132 or any requisition made under Section 132A. The provisions of Section 132(5), which enabled the Income Tax Officer to estimate the undisclosed income including the income from the undisclosed property as understood in clause (c) of Section 132(1), calculate the

amount of tax on the income so estimated, determine the amount of interest payable and penalty imposable as per the Act, specify the amount required to satisfy any existing liability, and retain in his custody the assets or part thereof as are in his opinion sufficient to satisfy the aggregate of these amounts, are confined to cases where any money, bullion, jewellery or other valuable article or thing (referred to as "assets") is seized under sub-section (1) or sub-section (1)(a) of Section 132 as a result of search initiated or requisition made before the first day of July, 1995. In place of all that could be done under sub-section (5) of Section 132 of the Act when the seizure was prior to 1st July, 1995, a separate procedure is devised in Chapter XIV-B to deal with the cases where search is initiated or requisition made under Section 132 or 132A, after 30.6.1995. This procedure is for assessment of the `undisclosed income' as defined in Section 158B(b) of the Act. We may notice from the provisions of Section 132(9A) that where the Authorised Officer has no jurisdiction over the person referred to in clauses (a), (b) or (c) of sub-section (1) of Section 132, the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the Income-Tax Officer having jurisdiction over such person. It will also be noticed from the provisions of Sections 120 and 124 of the Act, that there are provisions made for empowering the Assessing Officers in respect of the area and they have jurisdiction in respect of any person residing or carrying on business within that area. Thus, in cases where the search has initiated after 30th June, 1995 and the Authorised Officer who has conducted the search and seizure under Section 132(1) of the Act is not the Assessing Officer having jurisdiction over the person, he will be handing over the material to the Assessing Officer having jurisdiction in the matter as a result of the provisions of sub-section (9A) of Section 132 of the Act.

7. The definition of "undisclosed income" in Section 158B(b) includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions where such asset, entry, or other document or transaction representing wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Act. It therefore, follows that what the assessee had already disclosed or would have disclosed is not to be treated as undisclosed income.

8. From the provisions of Section 158BA(1), it would appear that the Assessing Officer can proceed to assess the undisclosed income only if a search is initiated under Section 132 of the Act by the authorised officer. The total undisclosed income relating to the block period is to be charged to tax at the higher rate of 60% presently specified in Section 113 of the Act after such undisclosed income is assessed in accordance with the provisions of this Chapter by the assessing officer as income of the `block period' as defined in Section 158B(a) of the Act. This has to be done "irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not" as provided in sub-section (2) of Section 158BA. This expression clearly indicates that the block assessment of undisclosed income and its being charged to a higher rate of tax prescribed, was independent of the pending regular assessments and it operated in a different field of the assessment of undisclosed income which was not and would not have been disclosed for the purposes of the Act. Undisclosed income, by this Chapter, is classified separately for the purposes of assessment and is required to be worked out in the manner prescribed therein and treated to a higher rate of tax. This process did not not disturb the assessments already made, of the previous years, and was only intended to sniff out what had remained hidden and would not have been disclosed by the assessee. There would therefore be no overlapping in the nature of the assessment made under this chapter of undisclosed income and the regular assessment made under Section 143(3) of the Act.

If the pending regular assessment proceedings were to be frozen and got substituted by the assessment of the undisclosed income of the block period, the legislature would have been specific on that aspect and would have made it clear that the pending regular assessment proceedings should be dropped. The provisions of this chapter do not either expressly or by necessary implication even remotely indicate that the regular assessment proceedings of a previous year covered in the block period, were required to be stayed or dropped or substituted by the proceedings of this chapter.

9. Under sub-section (3) of Section 158BA, where the date of filing the return of income under Section 139(1) for any previous year has not expired, and the income of that previous year or the transactions relating to such income are duly recorded, then such income is not required to be included in the block period. This

obviously means that the regular assessment of that previous year which has remained pending, will proceed notwithstanding that it was falling in the block period. Same would be the case where the block period includes only a part of the previous year of which the return is filed for regular assessment, and the regular assessment can proceed notwithstanding that the undisclosed income for a part of that previous year was within the block period.

10. There is yet another important indication to show that the assessment of undisclosed income is altogether a different matter from the regular assessments. Under Section 158BB of the Act, for computing the undisclosed income of the block period, the Assessing Officer has to compute the total income of the relevant previous years on the basis of the evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. The evidence found as a result of search or requisition would be the evidence that has been gathered by the authorised officer under Section 132 and 132A of the Act. This would also include the statements recorded by the Authorised Officer during the course of search and seizure under Section 132(4) of the Act which empowers him to record statement of any person in possession of such assets or books of account or documents on oath and which can be used in evidence in any proceeding under the Act. The evidence so gathered by the authorised officer under Section 132 alongwith other material seized, marked, or inventoried, would be available before the Assessing Officer when he exercises his power to assess the undisclosed income under Chapter XIV-B of the Act. This evidence found and material available is to be the basis for computing the aggregate of the total income of the previous years falling in the block period. This exercise is undertaken as an initial step for computation of the undisclosed income under Section 158BB(1) for which the aggregate of the total income of the previous years falling within the block period is to be computed in accordance with Chapter IV of the Act, i.e. under various heads mentioned in that chapter, on the basis of the evidence found as a result of search and the material or information as are available with the assessing officer. For the purpose of working out the undisclosed income for the block period, he is then required to reduce the aggregate of the total income so worked out for the block period by aggregate of the total income determined, on the basis indicated in clauses (a) to (f) of Section 158BB(1) of the Act or increase it by the aggregate of losses of such previous

year determined on the basis of these clauses. It would be important to note that for the purpose of determination of undisclosed income under sub-section (1) of Section 158BB(1), the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of Chapter IV without giving effect to set-off or brought forward losses under Chapter VI or unabsorbed depreciation under Section 32(2) of the Act, as provided by the explanation to Section 158BB(1) of the Act. It would thus, be clear that the total income of the previous year computed by the assessing officer in respect of the block period would not be the same total income which is assessed in respect of the previous years during the regular assessment proceedings. In the assessments in the regular assessment proceedings, there would be no scope for applying this explanation which lays down a special formula for working out the total income of the previous years falling in the block period for the purposes of determination of undisclosed income. Thus, computation of the aggregate of total income of the previous year falling in the block period is not the same thing as the assessment of total income of the previous year made under Section 143(3) of the Act. Under Section 158BB(1), read with Section 158B(c) of the Act, what is assessed is the undisclosed income of the block period and not the total income or loss of the previous year required to be assessed in the normal regular assessment under Section 143(3), where the assessing officer makes an enquiry to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner and on the basis of the evidence produced by the assessee, the evidence obtained on the specific points and all relevant material which he has gathered assesses the total income or loss and determines the sum payable thereon as per that assessment. This exercise under Section 143(2) and (3) for regular assessment stands in contrast to the exercise of the assessing officer under Section 158BB read with 158BC(b), where he has to assess only the undisclosed income of the block period on the basis of the evidence found and material available as a result of the search conducted by the authorised officer under Section 132 of the Act. Therefore, there is no merit in the contention raised on behalf of the petitioners that once the petitioners - assessees' total income of the previous year falling in the block period of which regular assessment is pending, is computed while computing the aggregate of the total income of the previous years falling in the block period under Section 158BB(1) in the process of finding out the undisclosed

income, there would be a second assessment of the total income if the regular assessment of that previous year is allowed to proceed under Section 143(3) of the Act. These provisions operate entirely for different purposes, one for assessing undisclosed income of the block period while the other for assessing the total income or loss of the previous year in a regular assessment.

11. The total income for the purpose of determination of undisclosed income under Section 158BB(1) is to be computed in accordance with the provision of Chapter IV i.e. under various heads of income, without giving effect to set-off of brought forward losses under Chapter VI or unabsorbed depreciation under Section 32(2). This method of working out the total income is devised for the purposes of assessment of undisclosed income and would be alien to the regular assessment of income under Section 143(3) of the Act. Moreover, the provisions under sub-section (4) of Section 158BB, which require that the loss brought forward from the previous year under Chapter VI or unabsorbed depreciation under Section 32(2) shall not be set-off against the undisclosed income determined in the block assessment under this chapter, but may be "carried forward for being set-off in the regular assessment" would also suggest that the pending regular assessments are not to be disturbed and they could proceed in a normal manner under Section 143(3) of the Act.

12. The time limit provided in Section 158BE for completion of block assessment is one year from the end of the year in which the last authorisation of search was executed where such search was initiated between 30th June, 1995 and 1st January, 1997 and two years from the end of the month in which the last authorisation of search was executed in cases where such search was initiated after 1.1.1997. The pending regular assessments have their own period of time limit prescribed in Section 153 being two years from the end of the assessment year in which the income was first assessable. Even the notice under Section 143(2) for undertaking the regular assessment is to be served within the time frame of twelve months from the end of the month in which the return is furnished. Therefore, where there is a pending regular assessment for one of the previous years falling in the block period for which the proceedings under Chapter XIV-B are commenced as a result of search under Section 132, there is nothing that would prevent the assessing officer to proceed with and complete the regular assessment of such previous year in the regular assessment, before the block assessment of

undisclosed income is made. There would be no warrant for with-holding the regular assessment which is pending for the previous year falling in the block period. The assessment of undisclosed income of a block period is thus, different from the regular assessment of the total income of a previous regular assessment year and both can operate together. The block assessment procedure is not intended to have the effect of excluding the regular assessments that may be pending. The block assessment targets the area of undisclosed income - that what was not disclosed and would not be disclosed, while the regular assessment is to assess the total income or loss of the previous year where return is filed under Section 139 and the assessing officer considers it necessary or expedient under Section 143(2) to ensure that the assessee had not understated the income or has not computed excessive loss or has not underpaid tax in any manner. Both these areas are different and there is no warrant to prevent the statutory power of regular assessment from being exercised where the block assessment is undertaken or completed for assessing the undisclosed income.

13. The anxiety voiced on behalf of the petitioners that there would be double taxation if the pending regular assessment is allowed to proceed, is baseless. The assessed undisclosed income is taxed at higher rate of 60% under Section 113 and in respect of such assessed undisclosed income, there can arise no question of paying the tax again in a regular assessment. All taxes paid by the assessee are required to be taken into account and adjustments given in a regular assessment and there would be no scope in such regular assessment for the assessment of his undisclosed income already assessed in the block assessment.

14. No interest and penalties enumerated under Section 158BF of the Act can be levied or imposed upon the assessee in respect of the undisclosed income determined in the block assessment. However, there is no immunity from other penal provisions such as failure to deduct tax at source [Section 271(c)], failure to comply with Section 269SS [Sec. 271(d)], failure to comply with Section 269D [Section 271(e)], failure to furnish information, returns or other statements under Sections 94(b), 176(iii), 133, 206, 206C, 285B, 134, 139(4A), 197A, 226(2) or 203 [Section 272 (ii)], failure to pay tax [Sec. 221], failure to pay self assessment tax [Sec.140A] etc. There is also no immunity from any prosecution. The penalties and prosecutions may be associated with the orders of the regular assessment.

The penalties and prosecutions that may be associated with the orders of regular assessment cannot be preempted by a specious suggestion made on behalf of the petitioners that the pending regular assessments are to be omitted if that previous year happens to fall in the block period for assessment of undisclosed income.

15. In cases where appeals, revisions and references are decided from regular assessment orders of the previous years included in the block period, the decisions may have the effect of disturbing the assessment made by the assessing officer. The provisions of sub-sections (1) and (2) of Section 153, prescribing the time limit for making orders of assessments do not apply to assessments, re-assessments or recomputations made in consequence of or to give effect to any finding or direction contained in an order made under Sections 250, 254, 260, 262, 263 or 264 or in an order of any Court in a proceeding otherwise than by way of appeal or reference as laid down in Section 153(3)(ii) of the Act. Obviously therefore, the regular assessment already made will have to be brought in tune with such orders or may even have to be done denovo, if so ordered, in which event it would amount to a regular assessment still pending. For example under Section 251, the CIT (Appeal) may confirm, reduce, enhance or annul the assessment or he may set aside the assessment and refer the case back to the assessing officer for making a fresh assessment. The Tribunal has, in deciding appeals, wide powers to pass orders thereon as it thinks fit, as provided in Section 164(1). After decision on the questions of law by the High Court or the Supreme Court, the Tribunal has to pass such orders as are necessary to dispose of the case conformably to such judgement, as provided in Section 260 of the Act. The Commissioner also has revisional powers under Section 263 to enhance or modify the assessment, or cancel it and direct a fresh assessment. All these may entail changes in the original assessment or fresh regular assessments in respect of the previous years falling in the block period. The fact that block assessment of undisclosed income is pending or is made, will not take away all these statutory powers, the exercise of which would affect the regular assessments already made or may entail fresh regular assessment for a previous year falling in the block period for assessment of undisclosed income. It would produce startling results of denuding all these authorities of their statutory powers in respect of the regular assessments made or to be made for the previous years falling in the block period. That surely is not intended by the legislature and no such disastrous result

is contemplated by introducing special procedure for assessment of search cases in Chapter XIV-B. The special procedure for assessment of undisclosed income as a result of search, which is intended to target that income or property which has not been or would not have been disclosed for the purposes of the Act, is not meant to provide an insulation to such assessees from the consequences of regular assessments made or to be made for any previous year falling under the block period. The powers of regular assessment are kept intact and so are all the appellate, revisional and other powers affecting such regular assessment and all the statutory consequences flowing from the exercise of such powers would follow alongside of this special assessment procedure devised for dealing with the undisclosed income as a result of search. It therefore follows that in the inquiry under Section 143(3) for regular assessment which was pending when the block assessment was made, the Assessing Officer who comes across evidence and material which was not found or made available in the process of block assessment, cannot ignore the same and he will be duty bound to make the regular assessment taking into account such evidence and material gathered in the enquiry under Section 143(3) to ensure that proper assessment of total income is made and tax determined on the basis of such assessment. An assessee who had not disclosed and did not intend to disclose income or property, which fact is detected in the search, cannot acquire immunity from being assessed to still other income or property which did not come to surface as his undisclosed income from the evidence found and material available at the time of the block assessment, but is now found by virtue of the enquiry made under Section 143(2)(iii) of the Act for regular assessment showing that the assessee had understated the income or had computed excessive loss or underpaid tax even after taking into account the fact that his undisclosed income for the block period was separately assessed and tax at the higher rate of 60% was charged thereon. The immunity from levy of penalties attached to the undisclosed income determined in the block assessment have no relevance to the levy of interest and penalties that may follow the regular assessment in respect of under-statement of income or computation of excessive loss made by the assessee, which are not relatable to the undisclosed income determined and taxed in the separate proceedings.

The essence of the special procedure of Chapter XIV-B is to provide for an assessment of the undisclosed income detected as a result of the search without affecting the regular assessments made or to be made.

The special provisions are devised to operate in the separate field of undisclosed income and are clearly in addition to the regular assessments covering the previous years falling in the block period.

16. From the above statutory provisions it therefore clearly emerges that the Assessing Officer can proceed with the regular assessment, which was pending at the time when the block assessment is undertaken for the undisclosed income or is completed. The impugned notices under Section 143(2) are in respect of the regular assessment and the Assessing Officer is perfectly within his jurisdiction to proceed with the same as per Section 143(3) and make a regular assessment of the total income/loss of the previous year in question as contemplated therein in respect of all these assessees and complete the regular assessments for the said previous of the assessment year 1995-96 notwithstanding the fact that the said previous year was included in the block period for the purpose of assessment of the undisclosed income and that such assessment was already done and is the subject matter of challenge before the Tribunal under Section 253(1) of the said Act.

It was submitted that in Special Civil Application No. 1148/98 and Special Civil Application No. 1153/98, the Assessing Officer had indicated the reason while he was proceeding with an enquiry for regular assessment by issuing notice under Section 143(2) of the Act while in other matters no such reasons have been indicated. In all these petitions, the notices have been issued by the Assessing Officer under Section 143(2) calling upon the assessees to attend his office in connection with the return of income submitted by them for the assessment year 1995-96 on which he wanted to have some further information on certain points. Just because in some matters in response to the petitioners' insisting to drop the proceedings, the Assessing Officer did not oblige them and indicated that in response to the information given by the assessees on account of purchases made from different parties, letters were written to some of them for confirmation of the assessees' accounts in the books and it was noticed that in some cases (names, for example, in the communication dated 20.2.98 placed on record in Special Civil Application No. 1148/98), these parties were not located at the addresses given by the assessees, it cannot be said that it was incumbent upon the Assessing Officer to give reasons as to why he was issuing the notices under Section 143(2) of the Act. No such requirement of furnishing grounds which prompted the Assessing Officer

to issue notice under Section 143(2) for making the regular assessment can be imposed in absence of any such provision. The only requirement for issuance of the notice under Section 143(2) for calling upon the assessee to attend office and produce evidence in support of the returns is that the Assessing Officer should consider it necessary or expedient to ensure that the assessee had not understated the income or has not computed excessive loss or has not underpaid the tax in any manner. There is no need to give any reasons or grounds for proceeding with such regular assessment and the requirement of Section 147 of there being reason to believe that any income chargeable to tax has escaped assessment, can never be read in the provisions of Section 143(2) under which the Assessing Officer can issue notice for seeking evidence in support of the returns for making the regular assessment under sub-section (3) of Section 143.

17. Much theoretical and statistical exercise was attempted by the Counsel for the petitioners to high-light the problems that can arise while computing the undisclosed income of the block period under Section 158BB of the Act. The block assessment is not in question before us and it is already the subject matter of challenge before the Tribunal under Section 253(1) of the Act. Any question or problem that may arise in implementing the said provision or other provisions of Chapter XIV-B has no bearing whatsoever on the question whether the Assessing Officer has jurisdiction to proceed with the regular assessment of the previous year 1995-96 in case of these petitioners.

18. That brings us to the decision in Raja Ram Kulwant Rai (supra) decided by the Punjab and Haryana High Court. In that case it was held that the income of each of the 10 years prior to the year of search including the assessment years 1988-89 and 1989-90 had already determined separately under two heads namely (i) income already assessed and (ii) concealed income, and that the income for these two years did not remain to be determined after determination of year-wise income because all pending assessments of those years stood merged in the collective assessment under Section 158BC(c) of the Act. It was therefore held that the notices issued under Section 148 of the Act prior to the search, were rendered infructuous after the framing of the assessment for the block period of ten years under Chapter XIV-B and that the Department could not proceed on the basis of such notices prior to the framing of assessment under Chapter XIV-B. It was held that the notices issued under Section 143(2) were not valid and

liable to be quashed. We have carefully gone through this judgement, which has got only a persuasive value as a precedent and is not a precedent binding on us. After narrating the facts and the provisions of the Act relating to the block assessment, the Hon'ble High Court observed that Section 158BA starts with a non obstante clause that notwithstanding anything contained in any other provisions of the Act after June 30, 1995, cases arising out of search and seizure under Section 132 shall be assessed in accordance with the newly introduced Chapter XIV-B. Once an assessment is framed qua a particular year falling within the block period of ten years then, no other assessment under any other provisions of the Act can be framed. It was then observed that the income of the assessment years 1988-89 and 1989-90 did not remain to be determined after determination of yearwise income and pending assessments of those years stood merged in the collective assessment under Section 158BC(c) of the Act. Once the income of the assessment years 1988-89, 1989-90 has been determined taking into account the income already assessed and concealed income which includes the years in question, no assessment remained to be framed.

We must say, with utmost respect, that we are not able to discern any reasons for the propositions laid down in Raja Ram Kulwant Rai's case and for the reasons which we have given hereinabove, we find it impossible to accept the proposition that the jurisdiction of the Assessing Officer to proceed with the regular assessment is taken away where that previous year falls in the block period of assessment of undisclosed income, or that all pending assessments stand merged in the `collective assessment'.

19. In the case of N.T. John (supra), the learned Single Judge of the Kerala High Court held in a writ petition that the block period means the period of ten previous years preceding the previous year in which the search was conducted under Section 132 or any requisition was made under Section 132A and the assessment year 1993-94 being one of the ten previous years contemplated in Section 158B and the procedure laid down in XIV-B having been put in motion, the assessment for the assessment year 1993-94 was also included in the notice under Section 158BC for the purpose of block assessment and therefore, it was not proper to keep alive the notice and consequent assessment order for the assessment year 1993-94. The writ petition was filed praying for a direction to quash the notice and proceedings to complete the regular assessment for the year 1993-94 and for a

direction to the respondent to issue notice under Section 158BC for the block period involved in the search and seizure. The High Court had, as an interim measure, ordered that the assessment order shall be completed for the year 1993-94 and will be kept in abeyance as if it had not been passed. The only question before the High Court was that as to how the assessment order for the year 1993-94 passed by the respondents pursuant to the interim order of the Court should be dealt with. The High Court held that since admittedly the assessment year 1993-94 was already included in the notice issued by the Department for the purpose of block assessment, it did not think proper to keep alive the notice and the subsequent assessment based thereon.

We are not able to discern the reasons for this decision. In view of the reasons that we have given hereinabove, we find it impossible to accept this view.

20. Now, we come to the submission of the learned Counsel for the petitioners that even if we may be of different opinion and hold the view that the pending regular assessments can proceed notwithstanding the fact that the previous year of such pending regular assessment was included in the block period for the assessment of the undisclosed income, we should refrain from taking such view in order to keep up uniformity with the contrary views taken by the Punjab & Haryana and Kerala High Courts. It was submitted relying upon the decision of this Court in Sarabhai Sons Ltd. (supra) that there is a longstanding practice of following the views of other High Courts, even if this High Court was of a different view on the point. It was pointed out from the said decision that the High Court had followed the decision of the Bombay High Court in Maneklal Chunilal & Sons Vs. CIT 24 ITR 375, in which it was held that in conformity with the uniform policy which had been laid down in income-tax matters, whatever the view of the High Court may be, we must accept the view taken by the another High Court on the interpretation of the Section of a Statute, which is an All-India Statute. It was observed that eventhough this Court may be persuaded to take a different view, it was not inclined to do so in view of the settled practice. It was noticed by the High Court that there was a long-standing practice under which the assesses had been given relief (under Section 80J) to the extent of the capital employed and not proportionate relief to the extent of six per cent per annum in a case where the new industrial undertaking has worked only a part of the year as was contended for on behalf of the

revenue. The High Court has nowhere laid down any absolute proposition in the said decision that it lacked the power to take a different view in cases where some contrary view was expressed. The High Court was not inclined to disturb the longstanding practice and therefore it followed the decisions of the other High Courts. This ruling cannot be so read as to take away the power of the High Court from rendering its own opinion on the questions referred to it or to similarly circumscribe the constitutional powers of the High Court to entertain and decide writ petitions under Article 226 of the Constitution. The submission of the learned Counsel for the petitioners that if we are inclined to take a different view from the view taken by the Punjab & Haryana and Kerala High Courts, we should refer the matter to a larger Bench, is wholly misconceived and uncalled for. Not only during the course of his arguments the learned Counsel submitted that we should not express a contrary view but even at the fag end of his arguments also he insisted that we should not take a different view than the one taken by the Punjab and Haryana High Court and the Kerala High Court, relied upon by him in support of the petitioners' case. There can be no dispute about the proposition that in income tax matters which are governed by All-India Statute, when there is a decision of a High Court interpreting a statutory provision, it would be a wise judicial policy and practice not to take a different view. However, this is not an absolute proposition and there are certain well-known exceptions to it. In cases where decision is sub silentio, per incuriam, obiter dicta or based on a concession or takes a view which it is impossible to arrive at or there is another view in the field or there is a subsequent amendment of the statute or reversal or implied over-ruling of the decision by a High Court or some such or similar infirmity is manifestly perceivable in the decision, a different view can be taken by the High Court. This is clearly born out from the decision of this Court in Arvind Boards & Paper Products Ltd. Vs. CIT, reported in 137 ITR 635, which had also taken into consideration the Bombay decision in the case of Maneklal Chunilal & Sons Ltd. (supra).

21. While the decision of any other High Court is entitled to our highest esteem and respect, the constitutional powers of the High Court in its writ jurisdiction cannot be reduced to simply matching the colours of the case at hand against the colours of many sample cases spread out upon its desk and accept sample nearest in shade as the applicable rule. The system of law cannot be evolved by such mechanical process and no

judge of a High Court worthy of his office, views the function of his place so narrowly. If that were all there was to our calling, there will be little of intellectual interest about it. The choice of a path for us cannot be made so blind and unintelligent, to be followed without a survey of the route which has been travelled and of the place where it would lead. Necessarily therefore, reasons that are given in the decisions of other High Courts relied upon for the petitioners, which have a great persuasive value as a precedents are required to be considered and the consequences are to be noted and if it becomes impossible to agree with them, or if there are no reasons at all and only announcements of legal precepts, the Court would be free to give its reasons, which may not coincide with the conclusions reached in the persuasive precedent relied upon. The decisions of any High Court are after all not intended to be "gag orders", for other High Courts and do not have the effect of freezing judicial thinking on the points covered by them. This is why in Arvind Boards & Paper Products Ltd. (supra), the Court after reviewing the authorities on the subject, clearly spelt out exceptions, such as where the decision is sub silentio, per incuriam, obiter dicta or based on a concession or takes a view which it is impossible to arrive at etc., which would justify the High Court from taking its own view and not just follow the precedent which may otherwise have a persuasive value, though not binding.

22. In view of what we have said hereinabove, we are of the view that there is absolutely no merit in these petitions and they are required to be rejected. All these petitions are therefore, rejected with no order as to costs.

At this stage, the learned Counsel for the petitioners made an oral request for granting certificate of fitness under Article 133, read with Article 134A of the Constitution of India, for appeal to the Hon'ble Supreme Court. In our view, there is no substantial question of law of general importance involved in these petitions, which needs to be decided by the Hon'ble Supreme Court. Our decision is based on the provisions of law which are clear, causing no ambiguity whatsoever. The request for certificate of fitness is therefore, rejected.

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